

CSD 1160 [05/15/03]

Name, Address, Telephone No. & I.D. No.

WILLIAM G. MALCOLM, #129271**KEVIN HAHN, #231579****MALCOLM ♦ CISNEROS, A Law Corporation****2112 Business Center Drive, 2nd Floor****Irvine, California 92612****(949) 252-9400 (TELEPHONE)****(949) 252-1032 (FACSIMILE)****UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

MICHAEL R. PATTERSON,

Debtor.

BANKRUPTCY NO. **09-10872****JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
and its successors and/or assignees,**

Moving Party

RS NO. **WGM-3****MICHAEL R. PATTERSON, Debtor,
and JAMES L. KENNEDY, Trustee,**

Respondent(s)

MOTION FOR RELIEF FROM AUTOMATIC STAY☒ **REAL PROPERTY** ☐ **PERSONAL PROPERTY**

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below:

1. A Petition under Chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on **JULY 28, 2009**.

2. Procedural Status:

a. ☒ Name of Trustee Appointed (*if any*): **JAMES L. KENNEDY**b. ☐ Name of Attorney of Record for Trustee (*if any*):c. ☐ (*Optional*) Prior Filing Information:

Debtor has previously filed a Bankruptcy Petition on: _____.

If applicable, the prior case was dismissed on: _____.

d. ☐ (*If Chapter 13 case*): Chapter 13 plan was confirmed on _____ or a confirmation hearing is set for _____.

Movant alleges the following in support of its Motion:

1. ☒ The following real property is the subject of this Motion:

a. Street address of the property including county and state:

**267 TWIN OAKS AVENUE
CHULA VISTA, CA 91910**

b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):

Single family residence

c. Legal description of property is attached as Exhibit A.

- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.
- e. *Fair market value of property as set forth in the Debtor's Schedules : \$100,000.00.
- f. *Nature of Debtor's interest in the property:

Owner

2. ☐ The following personal property is the subject of this Motion (*describe property*):

- a. Fair market value of property as set forth in the Debtor's Schedules: \$_____.
- b. Nature of Debtor's interest in the property:

3. *Fair market value of property according to Movant: \$_____.

4. *Nature of Movant's interest in the property: **Secured Creditor holding a First Note and Deed of Trust on the subject property.**

5. *Status of Movant's loan:

- a. Balance owing on the date of Order for Relief: \$484,430.50
- b. Amount of monthly payment: \$1,337.88
- c. Date of last payment: AUGUST 19, 2009
- d. If real property,
- i. Date of default: JULY 1, 2009
- ii. Notice of Default recorded on: N/A
- iii. Notice of Sale published on: N/A
- iv. Foreclosure sale currently scheduled for: N/A
- e. If personal property,
- i. Pre-petition default: \$_____ No. of months: _____
- ii. Post-petition default: \$_____ No. of months: _____

6. (*If Chapter 13 Case, state the following:*)

- a. Date of post-petition default: _____
- Amount of post-petition default: \$_____

7. Encumbrances:

- a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months:		Post-Petition Arrearages Total Amount - # of Months	
1 st : JPMORGAN CHASE BANK	\$484,430.50	\$1,398.00	1	\$1,133.73	1
2 nd : RUSSEL J. SINGER	\$310,000.00				
3 rd :					
4 th :					
Totals for all Liens:	\$794,430.50	\$1,398.00	1	\$1,133.73	1

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in the schedules or otherwise known to Movant:

☐ See attached page, if necessary.

*Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5.)

8. Relief from the automatic stay should be granted because:

- a. ☒ Movant's interest in the property described above is not adequately protected.
- b. ☒ Debtor has no equity in the ☒ real property ☐ personal property described above and such property is not necessary to an effective reorganization.
- c. ☐ The property is a "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or ____ days as ordered by this court) have passed since the entry of the order for relief in this case, and
- i. The Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
- ii. The Debtor/Trustee has
- (1) ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
- (2) ☐ commenced payments, but such payments are less than the amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
- d. ☐ *Other cause exists as follows (*specify*): ☐ See attached page.

Movant attaches the following:

1. ☒ Other relevant evidence:

Debtor's Schedules as Exhibit "E"

A copy of the Affidavit of the Federal Deposit Insurance Corporation, which reflects JPMORGAN CHASE BANK, NATIONAL ASSOCIATION as the Successor to WASHINGTON MUTUAL is attached hereto as Exhibit "F."

2. ☐ (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief from the automatic stay to allow JPMORGAN CHASE BANK to enforce its rights and remedies under its Note and Deed of Trust.
- ☒ Other: **JPMORGAN CHASE BANK requests a waiver of the 10-day stay provided by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.**

Dated: **September 29, 2009**

/S/ WILLIAM G. MALCOLM

[Attorney for] Movant,

SC/WAMU/42774

* Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5).